

## **EXHIBIT D**

### *First Day Hearing Transcript*

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 21-10646-jlg

4 - - - - - x

5 In the Matter of:

6

7 STONEWAY CAPITAL, Ltd.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 April 9, 2021

17 11:17 AM

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21 B E F O R E :

22 HON JAMES L. GARRITY, JR.

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re 1) Motion for Joint Administration

2 (Doc #2)

3

4 HEARING re 2) MOTION FOR AN ORDER (I) AUTHORIZING THE

5 DEBTORS TO PREPARE A LIST OF CREDITORS IN ELECTRONIC FORMAT

6 IN LIEU OF MAILING MATRIX, (II) AUTHORIZING THE DEBTORS TO

7 FILE A CONSOLIDATED LIST OF THEIR 30 LARGEST UNSECURED

8 CREDITORS, (III) AUTHORIZING THE DEBTORS TO NOTICE CREDITORS

9 THROUGH THEIR CLAIMS AGENT, (IV) EXTENDING THE TIME TO FILE

10 SCHEDULES AND STATEMENTS AND (V) ESTABLISHING PROCEDURES FOR

11 NOTIFYING PARTIES OF THE COMMENCEMENT OF THESE CASES

12 (Doc #7)

13

14 HEARING re Motion to Appoint PRIME CLERK LLC as Claims and

15 Noticing Agent (Doc #8)

16

17 HEARING re ) MOTION FOR AN ORDER AUTHORIZING THE DEBTORS TO

18 (I) OPERATE THEIR BUSINESSES IN THE ORDINARY COURSE AND (II)

19 ORDERING IMPLEMENTATION OF THE AUTOMATIC STAY

20 (Doc #13)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 S H E A R M A N & S T E R L I N G L L P

4 A t t o r n e y s f o r t h e D e b t o r

5 5 9 9 L e x i n g t o n A v e n u e

6 N e w Y o r k , N Y 1 0 0 2 2

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8 B Y : F R E D E R I C S O S N I C K ( T E L E P H O N I C A L L Y )

9 N E D S C H O D E K ( T E L E P H O N I C A L L Y )

10 J O R D A N W I S H N E W ( T E L E P H O N I C A L L Y )

11 J O H N G U E L I ( T E L E P H O N I C A L L Y )

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13 U N I T E D S T A T E S D E P A R T M E N T O F J U S T I C E

14 A t t o r n e y s f o r t h e U . S . T r u s t e e

15 2 0 1 V a r i c k S t r e e t , S u i t e 1 0 0 6

16 N e w Y o r k , N Y 1 0 0 1 4

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18 B Y : B R I A N M A S U M O T O ( T E L E P H O N I C A L L Y )

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7 BY: LUKE BAREFOOT (TELEPHONICALLY)

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14 BY: SOLOMON NOH (TELEPHONICALLY)

15

16 ALSO PRESENT TELEPHONICALLY:

17

18 THOMAS KESSLER

19 BRENDAN O'NEILL

20 ANDREW HARMES

21 MICHAEL LIPSKY

22 MARC ZELINA

23 JOHN BRINGARDNER

24 MARIA CHUTCHIAN

25 AMY ODEN

1 ALBERT TOGUT  
2 SHARA CORNELL  
3 PAUL GUNTHER  
4 ANA LUCIA HURTADO  
5 MIKE LEGGE  
6 GABRIEL SASSON  
7 BLAINE SCOTT  
8 BENJAMIN STEEL  
9 LEE WHIDDEN  
10 RICHARD COOPER  
11 JAMES JAKSA  
12 MARIA KONYUKHOVA  
13 FERMIN CARIDE  
14 DAVID MACK  
15 OMAR ALANIZ  
16 BEN WERTKIN  
17 BLAINE ADAMS  
18 THOMAS ARAYA  
19 CHRISTOPHER HORROCKS  
20 RACHAEL WALSH

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1 P R O C E E D I N G S

2 THE COURT: All right, good morning. It's Judge  
3 Garrity, and the matter before us is in Stoneway Capital  
4 Limited, case number 21-10646. This is the, matters are  
5 scheduled for a first day hearing in these cases. Can I get  
6 appearances, please?

7 MR. SOSNICK: Good morning, Your Honor, Fred  
8 Sosnick from Sherman & Sterling. And with me, appearing  
9 today, are Ned Schodek, Jordan Wishnew and John Gueli.

10 THE COURT: All right, thank you. Mr. Matsumoto I  
11 see you're --

12 MR. MATSUMOTO: Good morning, Your Honor, Brian  
13 Matsumoto for the Office of the United States Trustee.

14 THE COURT: Terrific.

15 MR. BAREFOOT: Good morning, Your Honor, Luke  
16 Barefoot from Cleary Gottlieb Steen & Hamilton, LLP, on  
17 behalf of a steering committee of an ad hoc group of senior  
18 secured noteholders.

19 THE COURT: All right, Mr. Barefoot.

20 MR. NOH: Good morning, Your Honor. For the  
21 record, Solomon Noh of Dechert LLP on behalf of the  
22 mezzanine lenders.

23 THE COURT: All right, Mr. Noh. Okay. Before we  
24 get started, just two housekeeping matters. Just to  
25 disclose on the record, during the period of, I think it was

1 the beginning of 2000, maybe the end of '99, through either  
2 2011 or '12, I was a member of the law firm of Shearman &  
3 Sterling. I overlapped, certainly, with Mr. Sosnick, and  
4 there may be others involved in the case, with whom -- who  
5 were my partners. I have no relationship with the firm,  
6 financial or otherwise, and have not had a relationship with  
7 the firm for some time.

8 The second housekeeping matter is that I am  
9 expecting a call on another matter that may come while this  
10 hearing is going forward. It won't be very long. What I  
11 propose to do is I will ring off, take the call, but ring  
12 back on. I don't expect that it will last more than five  
13 minutes, ten minutes at tops. And I would just ask that if  
14 that happens, you just bear with me, so that we can continue  
15 the hearing.

16 With that, Mr. Sosnick, why don't you get us  
17 started, or your colleague, whoever it might be.

18 MR. SOSNICK: Thank you, Your Honor, it will be  
19 me. For the record, Fred Sosnick from Shearman & Sterling  
20 for the Debtors. Your Honor, first of all, I wanted to  
21 thank you for your time this morning, on short notice for a  
22 first-day hearing.

23 We, Your Honor, filed an agenda, it's an amended  
24 agenda, at docket number 27. We intend to walk through the  
25 agenda. We note that the agenda does not include some



1 motions filed on behalf of the Ad Hoc Group, which were not  
2 included per the Court's notation on the docket; that they  
3 be disregarded, and so they're not on there, in accordance  
4 with that.

5 And we will, as I said, walk through it. As  
6 you'll see, the relief they're asking for is relatively  
7 light. And I don't think the actual relief itself should be  
8 controversial. But I think there is a lot that the Court  
9 should be aware of.

10 And in addition, I would note -- although not an  
11 agenda item, there was, at the request, which I'll mention  
12 later on, at the request of the Court in Toronto, Ontario;  
13 the Ontario Superior Court, Justice McEwen, ask that we  
14 bring a matter to this Court's attention. And he did so in  
15 an endorsement that he issued yesterday, and we have filed  
16 that at docket number 18. There's no motion pending with  
17 respect to it, but we did note that it has been filed and  
18 draw the Court's attention to it.

19 THE COURT: Thank you. I have seen that and I  
20 very much appreciate Justice McEwen's reaching out and  
21 providing us with that endorsement, or asking me to file  
22 that with the Court.

23 MR. SOSNICK: Thank you. So, Your Honor, I think,  
24 to just sort of explain to you what the Debtors are, or how  
25 we got here, and we, in that regard, in accordance with

1 local rule, we did -- it's local rule 1072 -- we did file at  
2 docket number three, a declaration of David Mack.

3 Mr. Mack is either the sole, or one of two  
4 directors of each of these entities, except for the entities  
5 that are limited partnerships, where he is the director --  
6 sole or one of two directors -- of the general partner of  
7 those limited partnerships.

8 As set forth in that declaration, we have six  
9 debtors in this case. And Your Honor, I call your attention  
10 -- because it might be the easiest way to describe this --  
11 to Exhibit A, to Mr. Mack's declaration, which is page 38 on  
12 the docket.

13 THE COURT: Mr. Sosnick, bear with me just a  
14 moment.

15 MR. SOSNICK: Absolutely.

16 THE COURT: All right, I apologize, Mr. Sosnick.  
17 I've got it in front of me. Please proceed.

18 MR. SOSNICK: Thank you, Your Honor. As depicted  
19 on the organization chart, there are six debtors, one of  
20 which is a British Virgin Islands Entity; the other five are  
21 Canadian entities. This line of companies itself is a group  
22 of holding companies for what are the four Argentine  
23 operating companies that are depicted at the bottom of the  
24 organization chart.

25 Effectively, what this company does through the

1 Argentine operating companies, is they've built and operate  
2 or have, in some degree, ready for operation, four power  
3 plants located in Argentina.

4 And so, with that, Your Honor, just to kind of  
5 walk you through a little bit of how these holding companies  
6 got here, and what the cases are about, in March of 2020, so  
7 a little over a year ago, there are, essentially, at that  
8 time, three groups of creditors. And, essentially, the  
9 capital structure looked like that, and continues in one  
10 way, shape or form, to look like that, and I'll get to a  
11 fourth part of the capital structure.

12 But, effectively, there were approximately \$686  
13 million, or there are today, outstanding secured notes that  
14 were issued by Stoneway Capital Corp. And so, Stoneway  
15 Capital Corp. is the entity, sort of in the middle of the  
16 charts, depicted in blue.

17 Stoneway Capital Corp. issued those notes. Those  
18 notes are secured, and they're secured by, among other  
19 things, assets of the operating companies in Argentina,  
20 which has been pledged through an Argentine trust; as well  
21 as assets that are located outside of Argentina. There's an  
22 offshore bank account through which Stoneway Capital Corp.,  
23 which leases the turbines that are used at the operating  
24 facilities, receives revenue here, offshore. And then that  
25 is an account that's been pledged to the indentured trustee

1 here, in the United States.

2 There is also revolving credit facilities that are  
3 issued by, or the obligors of those are directly the  
4 Argentine entities are about US\$26-ish million of those  
5 revolving credit facilities. They share in the same  
6 guarantee and pledge package as the notes, so they share in  
7 the same -- an interest in the trusts and the assets in  
8 Argentina as well.

9 And then there was a mezz loan, or a term loan  
10 facility, that was issued above this chart; the entity  
11 depicted in green, and GRM Energy. And GRM Energy issued  
12 that, and then there are guarantors of those, of that  
13 obligation. And that's where things were in 2020.

14 As we mentioned -- and I think this will come up  
15 at some later point as well -- there have been some  
16 additional funding that was put in by those same term  
17 lenders, in the form of unsecured notes that were largely  
18 used to pay fees, as the offshore account, which is the sole  
19 source of funds in the United States, was frozen by the  
20 indentured trustee. But those were not in existence at the  
21 beginning of the story, in March 2020.

22 And in March of 2020, what happened was, due to a  
23 number of events in Argentina, that I think are fairly well  
24 publicized now -- they've gone through -- the country has  
25 gone through a sort of second wave of its financial crisis.

1 And that led to problems with the ability of the operating  
2 company to recognize a revenue on a timely basis. The  
3 principal source of revenue for those entities is power  
4 that's sold under power purchase agreements to CAMMESA,  
5 which is a private but -- it's a public entity,  
6 nongovernmental public entity, that operates the grid in  
7 Argentina.

8 And as a result of that disruption, it was  
9 apparent that coming into March 2020, the company would not  
10 be able to satisfy its obligations under its existing debt,  
11 and went out and sought a standstill among its various  
12 creditors. And that, actually, was entered into and agreed  
13 to in 2020.

14 While that standstill was in effect, the company  
15 filed a concurso in Argentina, which was an event of default  
16 under the various loan documents, as well as the standstill.  
17 And that caused an exercise of remedies by the term lenders,  
18 who came in and, among other things, replaced the boards all  
19 the way up through the holding companies that are in  
20 bankruptcy today, in front of this Court.

21 So, that --

22 THE COURT: I'm sorry, pardon me. I'm sorry, Mr.  
23 Sosnick and I apologize for interrupting you. You said the  
24 companies filed concursos. Which entities? Were they the -  
25 -?

1 MR. SOSNICK: The operating companies filed --

2 THE COURT: Okay, I'm sorry, the op cos. Okay.

3 So, anybody below Stoneway Energy LP?

4 MR. SOSNICK: Correct.

5 THE COURT: Your chart is for -- okay. thank you.

6 MR. SOSNICK: And as a result of that, there was  
7 an exercise of remedies in 2020. And as I mentioned, the  
8 impact of that was that there was a change in directors  
9 through the capital structure.

10 And Mr. Mack, who is the Declarant, who is an  
11 independent director, a member of Drivetrain LLC and a  
12 former restructuring lawyer and investor with over 20 years  
13 of experience, was put in as the sole director.  
14 Subsequently, a second director, Naveed Manzoor, who is a  
15 Canadian citizen and is an independent director, also was  
16 appointed a director of Stoneway Capital Corp. later in  
17 2020, as part of the CBCA process; which I'll come to in a  
18 second, and was the topic of Justice McEwen's submission  
19 yesterday.

20 With that background, subsequent to all that  
21 happening, the noteholders and the term lenders began to  
22 discuss what to do next, and how to reach a consensual set  
23 of -- consensual resolution.

24 I should mention, Your Honor, that when --  
25 contemporaneous of Mr. Mack coming in, there was a change of

1 counsel, and we were brought in as part of that, when that  
2 happened.

3 So, through that process, in 2020, the parties  
4 negotiated -- really mostly amongst themselves, and the  
5 company was a bystander that was, to those negotiations;  
6 obviously, as things were required of the company, the  
7 company considered them, and typically, as the parties  
8 agreed, the company would agree with it. And we were sort  
9 of -- really as a way to -- as much as anything else,  
10 conserve value -- we stood by and let the parties who are  
11 stakeholders, negotiate and try to resolve things as they  
12 could.

13 Ultimately, what that resulted in was a  
14 restructuring support agreement among the Ad Hoc Group of  
15 creditors -- of noteholders, rather -- the term loan lenders  
16 and the company, that contemplated a consensual  
17 restructuring through a CBCA proceeding.

18 A CBCA proceeding is a proceeding under the Canada  
19 Business Corporations Act. It is in contrast to a CCWA,  
20 which Your Honor may be more familiar with. A CBC -- and I  
21 don't know Your Honor's familiarity with a CBCA -- but a  
22 CBCA is a solvent plan of arrangement procedure, in Canada;  
23 in contrast to the CCWA, which is a insolvency plenary  
24 proceeding, in Canada.

25 So, the company, was proceeding under the CBCA to

1 implement this plan of arrangement. A case was opened in  
2 the court in Ontario, in the Ontario Superior Court. Mr.  
3 Justice McEwen was -- is the Court -- is the judge who is  
4 presiding. And the parties were on their way to  
5 implementing that plan. And one of the final steps of that  
6 would be a meeting of noteholders to approve the plan. And  
7 through a series of different events, ultimately, that  
8 meeting was postponed several times.

9 And as that was pending in late -- sorry, in early  
10 December -- a decision was issued by the Argentine Supreme  
11 Court, with respect to one of the power plants owned by the  
12 Debtors, the Mateo power plant.

13 And that decision reversed the Court of Appeals'  
14 decision that had previously overturned an injunction that  
15 was prohibiting the Mateo plant's completion due to noise  
16 pollution concerns.

17 And the impact of that decision was, and is still,  
18 somewhat unknown because it was reversing a decision that,  
19 basically, if you followed through the chain of events, in  
20 theory, it would reinstate an injunction to stop the  
21 completion of a power plant that's already been completed.  
22 And so, it's quite an interesting set of events or process  
23 in Argentina.

24 And ultimately, that -- because it was one of the  
25 four power plants -- did disrupt the ability to complete the



1 plan of arrangement at that time. And as a result of the  
2 uncertainty, the meeting of creditors was suspended  
3 indefinitely as of December 22.

4 During that time, or following December 22 into  
5 the early part of this year, largely, the time was spent  
6 focusing on what happens in Argentina. And ultimately, the  
7 Appellate Court issued a decision saying it was going to  
8 remand back to the trial court, which is where it sits  
9 today, to decide what's going on.

10 But as all that was happening, the parties agreed,  
11 on March 15, to extend the restructuring support agreement.  
12 And the way the CBCA and the RSA interrelate, is that the  
13 CBCA was opened to allow the RSA, which was then inviting  
14 the plans, to be -- in effect, there was a stay that does  
15 accompany that proceeding, which expires, essentially, upon  
16 the expiration of the RSA. It's actually five days after  
17 that, but it expires at the expiration of the RSA going  
18 away; because essentially, that's when the parties cease to  
19 be pursuing the consensual arrangement.

20 So, as I mentioned, you know, that happened, that  
21 was extended in March. Shortly after it was extended, this  
22 Appellate decision came down remanding the Court. And the  
23 looming expiration of the RSA under this amended extension,  
24 was March 31.

25 And so, March 31 came and it was looking as if

1       there would not be an extension of the RSA. In fact, the  
2       RSA had required that it be extended three business days  
3       prior, which would have been the Friday before March 31.  
4       And that did not happen. But the parties continued to  
5       negotiate to see if there was a resolution of the issues and  
6       a way forward. Ultimately, that resulted in a standstill,  
7       informally, that expired at 11:59 on April 7.

8               And so, to fast forward a little bit, what's  
9       happened since that time, or really, what happened at that  
10      time, was in order to prevent creditor action, when it  
11      became apparent that the standstill was not going to be  
12      extended and to maintain this status quo, late in the  
13      evening of April 7; which is, you know, is two days ago, so  
14      that evening, the Board met and decided to commence these  
15      proceedings as a way to maintain the status quo.

16             As Your Honor, I think, can see, these were sort  
17      of bare bones filings without a lot of additional motions.  
18      We are still working out how to continue to finance these  
19      entities during chapter 11. I'd note, for the record and  
20      for the Court's benefit, that because they are holding  
21      companies, there are no day-to-day expenses. The expenses  
22      we'd have to figure out how to fund are largely the  
23      administrative expenses, professional fees, US Trustee fees  
24      and the like. But we are working to do that.

25             But the biggest hope of the company had been to

1 not get to a point where we were in any proceeding anywhere  
2 in the world. But when that became apparent, we did take  
3 that action.

4 And what we know, in hindsight, Your Honor, which  
5 is, I think, a lead up to just help put in context Justice  
6 McEwen's statement -- or his endorsement, rather -- is what  
7 we do know is that the decision to file was well founded.  
8 Because shortly after we filed -- and actually, what we  
9 believe was with -- and we believe it's based on statements  
10 that were made at yesterday's hearing in front of the  
11 Ontario Court -- which does not transcribe, so I'll just  
12 tell you what I believe and others could say what they  
13 believe they said or otherwise or ...

14 But we believe, with direct knowledge, of the  
15 automatic stay, going into effect in these cases, we believe  
16 the response of the -- well, we know the response was the  
17 indentured trustee filed involuntary CCAA proceedings  
18 against one of the entities. And so -- that was Stoneway  
19 Capital Corp., the issuer of the notes, and the sole entity  
20 that was subject to the CBCA. They filed that late on  
21 Wednesday night after we -- you know, they saw the -- we  
22 believe they saw -- certainly -- I think it's indisputable  
23 that they filed after these were commenced. As I said, I  
24 believe it was with knowledge, and I think they conceded  
25 that in Court yesterday, but certainly it was afterwards.

1 They commended the CCAA involuntarily. They then -- we  
2 have, we sent a letter reminding them about the stay. We've  
3 asked that it be withdrawn. To date, that has not been  
4 withdrawn. We may, in fact, come back to the Court very  
5 shortly to seek specific relief with that. But that CCAA  
6 motion is still pending, and is mentioned in Justice  
7 McEwen's endorsement.

8 And then, shortly after that, early yesterday  
9 morning, about, I think it was about three o'clock yesterday  
10 morning, the Ad Hoc Group filed a motion seeking a protocol  
11 to be put into effect between the US Court, Your Honor's  
12 Court, and the Canadian Court, under the Canadian CBCA  
13 Court.

14 There was a hearing yesterday. We opposed, the  
15 Debtors opposed that motion. And Your Honor, it's not  
16 because we don't think that under appropriate circumstances  
17 a protocol makes sense. And appropriate circumstances are  
18 when you have two plenary bankruptcy proceedings and you  
19 have to sort out which Court is going to handle what.

20 In the future, the Argentine operating companies,  
21 and maybe even some of the entities that are Debtors that  
22 have operations in Argentina, may elect to do something in  
23 Argentina. At that point, if necessary, a protocol might  
24 make sense. If we decided to bring an insolvency proceeding  
25 someplace else voluntarily -- again, I think a protocol

1 would make sense, and there are plenty of examples where  
2 that happens; this is just not one of them.

3 As I mentioned, only one of the Debtors here is a  
4 debtor, so it's not even clear what that protocol would be.  
5 But even more importantly, the CBCA is not a plenary  
6 insolvency proceeding, as is chapter 11. It's designed for  
7 something completely different. We know it's something  
8 completely different. Because even if Your Honor were not  
9 familiar with the CCAA, which I believe Your Honor may be  
10 based on your prior cases in your Court, the most obvious  
11 event, to the fact that it's two different proceedings is  
12 the Ad Hoc Group itself brought this CCAA and didn't  
13 actually move to do anything in the CBCA until after they  
14 had, effectively, moved to bring this into a CCAA.

15 And so, I think Your Honor, again, just to take  
16 you to -- as I noted, we filed the endorsement in which, you  
17 know, Justice McEwen says he thinks it would be premature to  
18 grant relief sought, and may be unnecessary or untimely, or  
19 not appropriate in any circumstance -- it says that on page  
20 two. You know, he described, at yesterday's hearing, the  
21 CBCA as a -- it was his quote, "A lame, if not a dead duck,"  
22 because of the type of proceeding it is.

23 So, we are not, at this point, moving ourselves.  
24 We understand a motion has been filed by the Ad Hoc Group  
25 seeking a protocol. We think it's very premature. It would

1 not be -- to us, make any sense to have a protocol with  
2 respect to a CBCA proceeding, and a chapter 11 proceeding.  
3 They're just two totally different types of proceedings.

4 And you know, of course, we do not have a problem,  
5 Your Honor, with taking Justice McEwen up on his own  
6 statement that he'd be willing to discuss things informally  
7 with Your Honor. We have no problem with that, but we just  
8 don't think we're at the point where, because of the nature  
9 of the proceeding, the protocol makes sense. If that  
10 changes, we will certainly move. And we know there's a  
11 pending motion, and we'll address that in further detail at  
12 the appropriate time when that motion is heard.

13 THE COURT: All right.

14 MR. SOSNICK: With that, Your Honor, if Your Honor  
15 didn't have -- let me pause and ask Your Honor if you have  
16 additional questions.

17 THE COURT: No, not at this point, I do not, thank  
18 you.

19 MR. SOSNICK: So with that, Your Honor, I think  
20 what I propose to do is turn to the matters that are  
21 scheduled to be heard, which are the four initial motions  
22 that we filed in their Items 1 through 4 on the agenda, as  
23 support for the purposes of providing support. To the  
24 extent that support is actually even necessary for the four  
25 motions we have filed, and I think given their routine

1 nature, I'm not sure you actually need support. But for the  
2 purposes of support of those four motions, I would ask to  
3 move Mr. Mack's declaration into evidence. Mr. Mack is  
4 available on this call, I believe live, I hope. I'm looking  
5 at the -- yes, on the Court Solutions. And with that, Your  
6 Honor, move it in for the purposes of considering the four  
7 motions before Your Honor.

8 THE COURT: All right, does anyone object to my  
9 admitting Mr. Mack's declaration, which is at ECF number 3?  
10 It's his direct testimony, solely as it relates to the four  
11 matters that are before the Court this morning?

12 There being no response, Mr. Mack's testimony is  
13 in. It's his direct testimony. And again, we're limiting  
14 it to the very ministerial matters that are before the Court  
15 this morning.

16 MR. SOSNICK: Okay. Thank you, Your Honor. With  
17 that, I would propose, if it's acceptable to Your Honor, to  
18 turn the podium, or the virtual podium, over to Mr. Jordan  
19 Wishnew, who is a colleague of mine, who will go through the  
20 first two items on the agenda. And then my partner, Ned  
21 Schodek, will cover the last two items on the agenda.

22 THE COURT: All right. That's fine.

23 MR. BAREFOOT: Your Honor, this is Luke Barefoot -  
24 -

25 THE COURT: I'm sorry -- yes, Mr. Barefoot.

1 MR. BAREFOOT: I apologize for interrupting, Your  
2 Honor. We do have some observations and remarks that we  
3 would like to make. They're more relevant to the factual  
4 background and the next steps that Mr. Sosnick outlined, and  
5 they are to any of the - whether you want to call it bare  
6 bones or procedural or et cetera -- relief that the Debtors  
7 do have up today. I'll take Your Honor's direction on  
8 whether you'd prefer to hear those now or address them  
9 afterwards, as well as discuss next steps with respect to  
10 the motions that the ad hoc group has filed.

11 THE COURT: Yes. Thank you, Mr. Barefoot. I  
12 think it makes sense. Let's deal with the motions and then  
13 we'll turn, and then I would be happy to hear from you. And  
14 as we talk and as you are making your presentation, we can  
15 then talk about the matters that you would like to get  
16 before the Court and --

17 MR. BAREFOOT: Very good. Thank you, Your Honor.

18 THE COURT: Terrific. Thank you very much. All  
19 right, Mr. Wishnew?

20 MR. WISHNEW: Thank you very much, Your Honor.  
21 Good morning. Jordan Wishnew, from Shearman & Sterling, for  
22 Stoneway Capital and its affiliate Debtors.

23 Your Honor, I'll be handling Items 1 and 2 under I  
24 on the second amended agenda, which appears at Docket Number  
25 27. The first item is a joint administration motion. That



1 was docketed at ECF Number 2 in the case 21-10646.

2 Your Honor, this is a fairly great forward motion.

3 The Debtors are asking the Court's permission to

4 procedurally consolidate these six cases and maintain one

5 docket for all of the cases.

6 As Your Honor may be aware, earlier this morning

7 we docketed a slightly modified form of order at Docket

8 Number 25. The changes there are to update the captions and

9 modify the wording in Paragraph 7.

10 This specific modification was made at the request

11 of the U.S. Trustee's office and simply just modifies the

12 text slightly to read the Debtors may file their monthly

13 operating reports required by the operating guidelines and

14 reporting requirements for Debtors in Possession and

15 Trustees, issued by the U.S. Trustee on a consolidating

16 basis. We had drafted it originally to say consolidated,

17 but shall track and break out disbursements on a debtor-by-

18 debtor basis. Other than that, the order is in the same

19 form as it was when we filed the first day motion.

20 THE COURT: All right. Thank you. Mr. --

21 MR. WISHNEW: Unless --

22 THE COURT: I'm sorry. Go ahead, Mr. Wishnew. I

23 apologize for interrupting you.

24 MR. WISHNEW: Oh, no, no. That was the conclusion

25 of my presentation, Your Honor.

1 THE COURT: All right. Thank you. Mr. Masumoto,  
2 do you wish to be heard?

3 MR. MASUMOTO: Good morning, Your Honor. Brian  
4 Masumoto, for the office of the United States Trustee. Your  
5 Honor, based upon the revised proposed order, we have no  
6 objection to the request.

7 THE COURT: All right. Is there anyone else who'd  
8 like to be heard? Okay. Thank you.

9 I've had an opportunity to review the motion. The  
10 motion is granted. You'll submit the order, and we'll get  
11 it entered.

12 MR. WISHNEW: Excellent. Thank you very much,  
13 Your Honor. Moving to the --

14 THE COURT: Thank you.

15 MR. WISHNEW: Moving to the second item, Your  
16 Honor, the next item on the agenda is the Debtors' -- well,  
17 we'll call it list and schedules motion, which can be found  
18 at ECF Number 4 in the lead case and was re-docketed at ECF  
19 7.

20 Your Honor, in this motion, the Debtors are  
21 seeking the following release. Specifically, to prepare a  
22 list of creditors in electronic format; allowing us to file  
23 a consolidated top-30 unsecured creditors list; allowing  
24 Prime Clerk, our proposed claims and noticing agent, to  
25 notice creditors; extending our time to file SOFAs and SOLS

1 by 30 days; and establishing procedures to notify parties of  
2 the commencement of the case.

3 Your Honor, prior to today's hearing, we had an  
4 opportunity to review this motion with the U.S. Trustee's  
5 office. It's our understanding that they had no comments.  
6 We are in the process of setting the date of the 341(A)  
7 meeting of creditors, and once that is set we'll coordinate  
8 mailing and publication of that notice with Prime Clerk.

9 And unless Your Honor has any questions, we'd ask  
10 for the Court's approval of this motion, pursuant to the  
11 proposed form of order, which has been docketed at Docket  
12 Number 24.

13 THE COURT: No, I don't have any questions, Mr.  
14 Wishnew. Thank you. Mr. Masumoto?

15 MR. MASUMOTO: Brian Masumoto, for the Office of  
16 the United States Trustee. No objection, Your Honor.

17 THE COURT: Does anyone else wish to be heard?

18 I have reviewed the motion and find good cause for  
19 the relief requested. The motion is granted. You'll submit  
20 the order, please.

21 MR. WISHNEW: Thank you. Thank you very much,  
22 Your Honor. I will turn the virtual podium of two my  
23 colleague, Ned Schodek.

24 THE COURT: Yes. Mr. Schodek?

25 MR. SCHODEK: Good afternoon, Your Honor. This is

1 Ned Schodek, from Shearman & Sterling, proposed counsel for  
2 the Debtors.

3 With Your Honor's permission, I'll proceed to  
4 Agenda Item 3, the Debtors' claims agent retention motion,  
5 which is Docket Number 8.

6 THE COURT: Thank you. Please proceed.

7 MR. SCHODEK: Your Honor, the Debtors seek to  
8 retain Prime Clerk as claims and noticing agent, pursuant to  
9 section 156(c), and importantly, that's the only relief we  
10 are seeking with respect to Prime Clerk today. We're not  
11 moving under Section 327 to retain them.

12 The application is supported by the declaration of  
13 Benjamin Steele, who is the Vice President at Prime Clerk.  
14 Mr. Steele has made himself available to the Court today to  
15 answer any questions, and his declaration is attached to the  
16 motion as Exhibit B.

17 And unless there are any objections, Your Honor,  
18 we would request that the Steele declaration be admitted  
19 into evidence at this time.

20 THE COURT: Anyone objection to my admitting the  
21 Steele declaration into evidence as Mr. Steele's direct  
22 testimony in this matter? Being no response, your request  
23 is granted.

24 (Declaration of Benjamin Steel of Prime Clerk  
25 Admitted Into Evidence)

1 MR. SCHODEK: Thank you, Your Honor. Your Honor,  
2 I'll keep this shorter because Prime Clerk's qualifications  
3 and experience speak for themselves, but wanted to note that  
4 before hiring Prime Clerk, the Debtors did make sure to  
5 consider a number of proposals from Prime Clerk's  
6 competitors. And after reviewing those proposals, the  
7 Debtors determined that Prime Clerk had a competitive and  
8 reasonable rates, and that it was well-suited for this  
9 engagement, given that it has handled large cases with an  
10 international element.

11 Your Honor, this motion was sent to the U.S.  
12 Trustee. And based on the U.S. Trustee office's feedback,  
13 we made one minor change to the proposed form of order,  
14 which we confirm Prime Court is okay with. And that change  
15 is reflected at Docket Number 26.

16 There's changed pages in the back, but basically  
17 all we did was add a new paragraph 38, to the effect that  
18 the limitation of liability section and the engagement  
19 letter is deemed to be of no force and effect with respect  
20 to the services to be provided pursuant to the order.

21 So, unless Your Honor has any questions or points  
22 of clarification, we would request entry of this order on a  
23 final basis.

24 THE COURT: I do not have any questions. Mr.  
25 Masumoto, do you wish to be heard?

1 MR. MASUMOTO: No, Your Honor. Based upon the  
2 revised proposed order, we have no objections.

3 THE COURT: All right. I've reviewed the motion,  
4 as well as the document submitted in support of the motion,  
5 and grant the motion to the extent that the Debtor is  
6 seeking to appoint Prime Clerk as the claims and noticing  
7 agent. So to that extent, the motion is granted. You'll  
8 submit the order, please, Mr. Schodek.

9 MR. SCHODEK: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. SCHODEK: Your Honor, moving on, the next item  
12 on the agenda is Item 4, Docket Number 13. This is the  
13 motion for enforcement of the automatic stay. With Your  
14 Honor's permission, I'll proceed to that.

15 THE COURT: That's fine. Thank you.

16 MR. SCHODEK: Thank you, Your Honor.

17 Your Honor, this is a standard motion for an  
18 automatic stay comfort order. And as Your Honor is well  
19 aware, these are comfort orders and they are very commonly  
20 used in cases where the debtors have a substantial  
21 international presence like the Debtors here, who, as Mr.  
22 Sosnick described, are holding companies. They control  
23 operating subsidiaries that operate in the Republic of  
24 Argentina.

25 And the comfort order we're requesting is

1 necessary in that other courts and creditors are often used  
2 to seeing court orders, and it's sometimes difficult to  
3 explain to them the provisions of the automatic stay, the  
4 ipso facto provisions, or the antidiscrimination provisions  
5 that are embedded in the Bankruptcy Code, and that we're all  
6 more familiar with.

7 So the proposed order and the motion is really  
8 meant to just simply restate those provisions of the code so  
9 that when we go into other jurisdictions and appear before  
10 other courts, we're able to show an order. And we tried to  
11 follow the models that have been used regularly in cases in  
12 the Southern District and strictly follow the provisions of  
13 the code, and that's the intent of the order.

14 So, unless Your Honor has any questions or points  
15 of clarification, we would respectfully request that you  
16 enter the order enforcing the automatic stay.

17 THE COURT: All right. I do not have any  
18 questions. Mr. Masumoto, do you wish to be heard?

19 MR. MASUMOTO: No objection, Your Honor.

20 THE COURT: All right. Does anyone else wish to  
21 be heard?

22 All right, I've had an opportunity to review the  
23 motion. I grant the motion. You will please submit the  
24 order.

25 MR. SCHODEK: Thank you, Your Honor. Your Honor,

1 that concludes what we had on the formal agenda. So I guess  
2 I'd turn the virtual podium over to Mr. Barefoot.

3 THE COURT: Yes. Mr. Barefoot?

4 MR. BAREFOOT: Good morning. Thank you, Your  
5 Honor. Luke Barefoot, of Cleary Gottlieb again, for the  
6 Steering Committee of an ad hoc group of senior secured  
7 noteholders.

8 Our clients hold more than 70 percent of the  
9 outstanding senior secured notes and we filed our 2019  
10 statement reflecting those holdings this morning at Docket  
11 Item Number 28.

12 With your permission, Your Honor --

13 THE COURT: I'm sorry. Mr. Barefoot, I am getting  
14 my call. So --

15 MR. BAREFOOT: Of course, Your Honor.

16 THE COURT: I need to ring off. Thank you.

17 (Recess)

18 THE COURT: All right, good afternoon, it's Judge  
19 Garrity, Mr. Barefoot I apologize for having to jump off  
20 like that. I think you were just starting to discuss the  
21 status of things from your perspective.

22 MR. BAREFOOT: Thank you very much, Your Honor,  
23 and appreciate it. Your Honor, again, for the record, Luke  
24 Barefoot of Cleary Gottlieb for the steering committee. The  
25 steering committee holds a majority of the senior



1 outstanding secured notes, and we filed our 2019 statement  
2 this morning, which reflected those holdings, and that's  
3 available at docket item number 28. With your permission,  
4 Your Honor, I'd like to just briefly be heard with respect  
5 to the steering committee's position on the filing of these  
6 cases, and then turn to discussing the motions that we have  
7 filed and anticipate filing and take Your Honor's direction  
8 on how to proceed on timing and procedures for those  
9 motions?

10 THE COURT: All right, that'd be fine, thank you.

11 MR. BAREFOOT: Your Honor, our clients were quite  
12 surprised and concerned that these Chapter 11 cases were  
13 filed in the first place. As Mr. Sosnick alluded to, there  
14 is a very long and complicated procedural history here, but  
15 there are a couple of salient points that I wanted to draw  
16 the Court's attention to. First, these proceedings were  
17 filed in violation of a standstill agreement between the  
18 parties that had not yet expired. Second, these cases set  
19 up a potentially conflicting set of proceedings, because the  
20 debtors themselves in October 2020 commenced CBCA  
21 proceedings before the Ontario Superior Court of Justice.

22 And while much of Mr. Sosnick's presentation  
23 referred to those proceedings in the past tense, those  
24 proceedings very much remain open and pending as  
25 demonstrated by the order that Mr. Justice McEwen entered

1 yesterday. Mr. Sosnick also described those proceedings as  
2 not insolvency proceedings, but it's important to note that  
3 CBCA's have been recognized as foreign name proceedings by  
4 other Courts in Chapter 15. Third, Your Honor, there was  
5 disclosure in the first day declaration from Mr. Mack that's  
6 been entered into evidence and that Mr. Sosnick alluded to  
7 that the debtors accepted insider financing for Gramercy  
8 Capital, their equity holder, shortly before the petition  
9 date.

10 The steering committee believes that accepting  
11 that insider financing itself without notice or consent from  
12 the holders is likely a further violation of the  
13 restructuring support agreement. But in any event, the  
14 steering committee is not aware of any efforts that the  
15 debtors made to shop that financing package to ensure that  
16 it was the best value for the estate, and certainly  
17 themselves were not approached by the debtors to seek  
18 alternative financing. It's also notable, Your Honor, that  
19 they accepted that financing shortly before the petition  
20 rather than have it approved by this Court under the  
21 strictures of section 364.

22 Forth, Your Honor, the boards of the -- direct --  
23 Boards of Directors of the operating subsidiaries in  
24 Argentina, whose members we believe were selected and  
25 appointed by Gramercy, sought after the petitions were filed

1 to revoke powers of attorney concerning the shares of those  
2 subsidiaries that were granted for the benefit of the  
3 secured noteholders. And finally, Your Honor, not only  
4 these facts, but as has been noted, the very conduct and  
5 scope of this hearing is not in keeping with the well  
6 thought-out and legitimate desire to reorganize, but rather  
7 with a last-minute litigation gambit to extract leverage.  
8 The pleadings before Your Honor, which I think Mr. Sosnick  
9 fairly described as light, are really the barest of  
10 pleadings, and not consistent with the suite of relief you'd  
11 expect from a debtor who had a legitimate desire to  
12 reorganize.

13 There were only a handful of procedural motions  
14 that were approved today, and notably not even a cash  
15 management motion to allow the debtors to exercise their  
16 accounts post-petition. On that point, Your Honor, I don't  
17 believe it's accurate to say that the only expenses of the  
18 holding companies or paid out of their accounts are  
19 professional fees as we are aware that there is a critical  
20 trade vendor whose relationship is important to preserve  
21 value, and who has traditionally been paid out of the  
22 holding company debtors accounts.

23 For all these reasons and more, Your Honor, we do  
24 intend to tee up what we think is the central issue,  
25 (indiscernible) item in this case. Whether these Canadian

1 entities should be proceeding before Your Honor or whether  
2 they should appropriately continue as they have for the past  
3 six months before the Court in Canada. Your Honor, I'd like  
4 then to turn to the motions that we filed, which was a  
5 motion to establish a briefing and discovery schedule on an  
6 abstention motion, and a motion to implement a cross-border  
7 protocol. We certainly understand your chambers' direction  
8 that those motions that were just filed late last evening  
9 won't be proceeding today, but we do believe that it's in  
10 everyone's interest to proceed expeditiously on the  
11 contemplated motion for extension so that precious and  
12 limited resources are not spent on proceeding in matters in  
13 the wrong jurisdiction.

14 So, I think with that, Your Honor, we would invite  
15 and accept Your Honor's direction with respect to scheduling  
16 a hearing on those two motions.

17 THE COURT: All right. Mr. Sosnick, do you wish  
18 to be heard on that? Mr. Sosnick, actually, have you had an  
19 opportunity to review the two motions, the motion -- let's  
20 start with the abstention motions, or the request for the --  
21 to schedule the abstention, the hearing on the abstention  
22 motion.

23 MR. SOSNICK: We have, Your Honor, had an ability  
24 to look at that. We have not, on the cross-border protocol  
25 motion, there was an exhibit I think that was 2,000 pages

1 long that didn't upload and so we're not entirely sure what  
2 is all in there, although I suspect it may have been stuff  
3 that was filed in the CBCA, but in any event, Your Honor, we  
4 have seen that, the scheduling motion. The issue with the  
5 scheduling motion, Your Honor, is that we don't know what  
6 this motion really entails. I understand Mr. Barefoot's  
7 position that it's an abstention motion and it's abstaining  
8 for something. We, as Your Honor, I mentioned earlier, we  
9 are of the view that, to the extent there is a CCAA  
10 proceeding that you're being asked to abstain to -- in favor  
11 of, it was a proceeding that was an involuntary, that was  
12 commenced in violation of the automatic stay, and again, we  
13 intend to seek redress for that, and -- if it is not  
14 withdrawn.

15 And we'll have an opportunity, I think, to have  
16 that discussion with this Court. But we believe that it was  
17 filed in not only actual disregard, but blatant disregard of  
18 the automatic stay. And so with that, the extent Your Honor  
19 is being asked to abstain in favor of that proceeding, we  
20 think it would be completely unwarranted and would suggest  
21 in fact, that if it's not withdrawn, that we -- it would be  
22 held in abeyance in order to preserve the -- preserve values  
23 (indiscernible) stated, Mr. Barefoot pointed out is an  
24 important consideration for us, pending resolution of our  
25 motion, if that's where it has to go to, or adversary

1 proceeding to enforce the stay. So --

2 THE COURT: Mr. -- I'm sorry to interrupt you, Mr.  
3 Sosnick. Mr. Barefoot, are you add -- is the abstention  
4 motion one in which what you're asking is that we abstain  
5 from hearing what all of the cases in favor of the CCAA, or  
6 what exactly is the request?

7 MR. BAREFOOT: That's correct, Your Honor.

8 THE COURT: I'm sorry, so the former? So, their  
9 involuntary CCAA proceedings have been commenced against  
10 each of the debtors, is that right?

11 MR. BAREFOOT: Your Honor, I'm not sure if each of  
12 the debtors are formal applicants in that proceeding or if  
13 they're sort of related parties. I do want to clarify, with  
14 respect to all the statements about the status of that  
15 involuntary proceeding, that is not moving forward. That  
16 was -- at the hearing that was convened yesterday before  
17 Justice McEwen, it was made very clear that we were not  
18 proceeding to ask the Canadian Court to take any action with  
19 respect to that involuntary petition because of the  
20 commencement of these Chapter 11 cases.

21 THE COURT: Right, but if you're asking us -- or  
22 me to abstain from hearing these cases, it's to abstain in  
23 favor of what?

24 MR. BAREFOOT: It would be -- for right now, Your  
25 Honor, the only proceeding this is formally open is the CBCA

1 proceeding. There is a pending motion in that proceeding to  
2 -- using US terminology, to effectively convert it to a CCAA  
3 proceeding.

4 THE COURT: Right, and which entity or entities  
5 are the subject of the CBCA?

6 MR. BAREFOOT: Your Honor, I believe that the  
7 petitioner in that case is Stoneway Corporation. I -- I'm  
8 not sure that I'm prepared right now to address in detail  
9 the exact nuances of how the other entities are addressed in  
10 that petition. What I might suggest, understanding Mr.  
11 Sosnick's position, is that we proceed as expeditiously as  
12 possible to file our motions, and would request that we  
13 promptly thereafter convene a hearing or a chambers  
14 conference where we would have the opportunity to either  
15 present a consensual briefing and discovery schedule or, in  
16 the absence of agreement have one ordered by Your Honor.

17 THE COURT: All right, Mr. Sosnick, any thoughts  
18 on that?

19 MR. SOSNICK: I -- Your Honor, and that's  
20 acceptable to us, we would hope to meet and confer and agree  
21 on a schedule, or if not, I'm sure Your Honor would make  
22 yourself available in some capacity to assist in that, so we  
23 are completely amenable to that.

24 THE COURT: All right, that would be fine. I  
25 think Mr. Barefoot, that's a productive suggestion. Now, on

1 the other matter, the protocol. Now, were you folks -- were  
2 your clients part of the hearings before Justice McEwen  
3 yesterday?

4 MR. BAREFOOT: Yes, Your Honor. It was --

5 THE COURT: And you -- and I'm sorry, would -- no,  
6 I apologize, I interrupted you, but is it -- was it your  
7 client that asked Justice McEwen to, I guess to implement  
8 the cross-border procedures?

9 MR. BAREFOOT: Your Honor, I believe it was  
10 technically the notes trustee who was the Movant on that  
11 application. Our clients obviously share, you know, an  
12 identity of interest with the Trustee.

13 THE COURT: Right, okay. All right. So, look, I  
14 -- I am not -- I'm not going to stop you from making the  
15 motion. I'm not sure that it's right that that relief is  
16 right, but this -- at this point or that the issue, I guess  
17 I should say is right for resolution. What I would ask you  
18 to do is confer with Mr. Sosnick. I agree to a -- what you  
19 folks could come up with on a briefing schedule, please  
20 reach out to Ms. Rodriguez, let us know and we'll try to  
21 implement whatever you folks resolve. Mr. Masumoto, do you  
22 need to be part of those discussions?

23 MR. MASUMOTO: No, Your Honor, Brian Masumoto with  
24 the (indiscernible) Trustee. No, Your Honor, not at this  
25 time.



1 THE COURT: All right. Does that work for you,  
2 Mr. Barefoot?

3 MR. BAREFOOT: Your Honor, that's fine. I'll just  
4 note for the record that you do have the endorsement from  
5 Justice McEwen in which he invites Your Honor to the extent  
6 you deem it appropriate to contact him, and of course --

7 THE COURT: Yes.

8 MR. BAREFOOT: -- the steering committee has no  
9 objection whatsoever should Your Honor decide to do that,  
10 either before or after entering a cross-border protocol.

11 THE COURT: No, and I very much appreciate that,  
12 Mr. Barefoot, and it very well may be that is some point  
13 where I think that's worthwhile, or where Mr. Justice McEwen  
14 thinks it's worthwhile reaching out to me, and I certainly  
15 have no objection if he wanted to do that or thought it  
16 appropriate to do that. I have no problem with that. I  
17 just think it may be premature at this point, I may have a  
18 better sense for it when you file the abstention motion, but  
19 at this point, I note the -- you -- again, your point's well  
20 taken as to what Justice McEwen indicated in the  
21 endorsement, and as I said, if I think it's necessary I will  
22 reach out to him.

23 MR. BAREFOOT: Very good, Your Honor.

24 THE COURT: Thank you. So, you'll coordinate with  
25 Mr. Sosnick and you guys will get back to us?

1 MR. BAREFOOT: We will, Your Honor.

2 THE COURT: All right, great. Thank you very  
3 much. Is there anything else that we need to address this  
4 afternoon in this matter?

5 THE COURT: Okay, then --

6 MR. SOSNICK: (overlapping conversation) record,  
7 Your Honor.

8 THE COURT: Sorry about that, Mr. Sosnick. Okay.  
9 Anyone else? Great. Thanks again, and get us the orders or  
10 the forms of the orders, we'll review them, and get them  
11 (indiscernible) as quickly as we can. Thanks very much.

12 MR. BAREFOOT: Thanks, Your Honor.

13 MR. SOSNICK: Thank you, Your Honor.

14 THE COURT: Okay.

15 (Whereupon these proceedings were concluded at  
16 12:21 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: April 9, 2021

[& - apologize]

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